

EXHIBIT 1

Gerald Thompson
November 06, 2024

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION
4 LANDSCAPE CONSULTANTS OF)
5 TEXAS, INC., and)
6 METROPOLITAN LANDSCAPE)
7 MANAGEMENT, INC.,)
8 Plaintiffs,)
9 v.) Civil Action No. 4:23-cv-03516
10 CITY OF HOUSTON, TEXAS,)
11 and MIDTOWN MANAGEMENT)
12 DISTRICT,)
13 Defendants.)
14

11 ORAL VIDEOTAPED DEPOSITION OF
12 GERALD THOMPSON
13 November 6, 2024
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15 ORAL VIDEOTAPED DEPOSITION OF GERALD THOMPSON,
16 produced as a witness at the instance of the Defendants
17 and duly sworn, was taken in the above-styled and
18 numbered cause on the 6th day of November, 2024, from
19 10:00 a.m. to 1:33 p.m., before Dawn McAfee, Certified
20 Shorthand Reporter in and for the State of Texas,
21 reported by computerized stenotype machine at the
22 offices of Husch Blackwell LLP, 600 Travis Street, Suite
23 2350, Houston, Texas 77002, pursuant to the Federal
24 Rules of Civil Procedure and the provisions stated on
25 the record or attached hereto.

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1 A. That's -- that's by --

2 Q. Go with me, if you could, to page 5, paragraph
3 14 at the top of the page.

4 A. Of Exhibit 3?

5 Q. Yes, sir.

6 A. Five?

7 Q. Page 5 of Exhibit 3, your Complaint.

8 A. Okay.

9 Q. And I'm looking at paragraph 14, right at the
10 top of the page.

11 A. Okay.

12 Q. And you tell me that much of Metropolitan and
13 Landscape's business depends on running government
14 landscaping contracts, which account for between 80 and
15 90 percent of their annual revenue. That's a -- that's
16 a true statement?

17 A. Yes.

18 Q. Okay. Of that 80 to 90 percent, over the last
19 five years, what percentage of that 80 to 90 percent has
20 been on contracts with the City of Houston?

21 A. Let's see -- over the last five years?

22 Q. Let's start with that time frame.

23 A. Last five years, 10 percent.

24 Q. Okay. And is that on one or more contracts?

25 A. One contract.

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1 I think was Exhibit 4. And I am looking at Paragraph 7
2 on the bottom of page 2, and I'll read it, "Landscape
3 Consultants and Metropolitan intend to bid for public
4 contracts with the City of Houston in the future and
5 would like to do so free from the disadvantage created
6 by the MWSBE Program's racial preferences." Did I read
7 that correctly?

8 A. Yes.

9 Q. What disadvantage is created by the program?

10 A. Well, there's several. Primarily -- primarily,
11 the program is discriminating against my companies
12 because I'm a white owner, even though 95 percent of my
13 employees are Hispanic. I don't know how much worse it
14 can get than to have your 14th Amendment right be
15 violated from equal protection under the law.

16 11 percent of a contract might not seem
17 like a lot to people that put these programs together,
18 but that's a lot of money when you have, you know, 40 to
19 50 people working for you, that you're responsible to
20 make payroll for them every -- every week -- every two
21 weeks.

22 There's also some very inherent risk
23 that's hard to quantify. When we sign a contract, we
24 take that contract very seriously and we follow the
25 terms and conditions in order to comply with that

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1 contract. From my understanding with these minority
2 businesses that are certified by the City, there is more
3 concern from the City, just to make sure that it's owned
4 by a minority as the main factor, in that, the minority
5 is working in the operation as a major contributor to
6 the operation, so -- and also has put some financial
7 interest in it. That seems to be the main concern. And
8 if you qualify for that, you become certified. There's
9 no regard for whether or not the subcontractors, that
10 I'm aware of, are complying with the insurance
11 requirements that we're required to have with the
12 contract, or that we would require from our own
13 subcontractors.

14 For example, the City of Houston requires
15 a certain level of liability, general liability. They
16 require a certain amount of auto liability. They
17 require a certain amount of, like, workman's comp
18 programs. So whose job is it to monitor that? Those
19 subcontractors, minority subcontractors, are not
20 required to submit those documents to us. That's a huge
21 problem.

22 The other risk factor is, who are these
23 people? Who are their employees? Do they background
24 check these employees? Are these employees Legal Work
25 Force? Do they do E-Verify? Who's -- who's gonna be

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1 responsible if something happens?

2 Then you have a problem with efficiency.

3 Our business is very fast paced. We have seven days to

4 accomplish the same work every week. And we have

5 scheduling. We have to get these things scheduled a few

6 days out. And when we have nonresponsive

7 subcontractors, typically we would fire them. But in

8 this case, we're beholden to the certified contractor

9 that the City has certified.

10 Q. Okay. So that was a long answer. I want to go
11 back and kind of walk through it.

12 A. Okay.

13 Q. Disadvantages created by the program is what
14 we're talking about.

15 The first thing you told me is that you --
16 you believe, and you feel, that you are being
17 discriminated against as a white owner of a business
18 that is -- the vast majority of your business is
19 minority individuals.

20 A. Correct.

21 Q. How do you see that discrimination? What is
22 the discrimination?

23 A. Well, the fact that I have to submit 11 percent
24 of a contract, which is designed to help the same
25 people -- the people that I'm trying to help, I already

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1 Q. And you don't know whether or not it is the
2 City's responsibility?

3 A. I do not.

4 Q. You and your companies don't play any
5 particular role in -- or any role at all, in making the
6 determination that these firms should be MBE certified,
7 correct?

8 A. Correct.

9 Q. All right. You don't know how they get on the
10 City's list, but you're not making that decision?

11 A. Correct.

12 Q. And efficiency, you mentioned that you're --
13 you can't go out and fire one of these subcontractors
14 like you might be able to otherwise, correct?

15 A. We can't depend on them, right.

16 Q. And that's the situation we talked about
17 earlier, where you have to go out and do the work
18 yourself, and then invoice the City for the work
19 yourself, and the City pays you for the work, correct?

20 A. Right. And that's why we made a decision to
21 have our own forces. We don't -- you know, they're all
22 employees, so that we have control over the scheduling
23 and that kind of thing.

24 Q. Okay. Did I miss any of the disadvantages that
25 you see that are cause to you and cause to your

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1 businesses by the City's program?

2 A. Well, on your -- on your rebuttal there, you --
3 you forgot the most important part, which is giving up
4 11 percent of the contract.

5 Q. Right. And explain to me how that is a
6 disadvantage.

7 A. I can go do it with my own people.

8 Again, we talked about the efficiency of
9 it, the risk involved of using someone, you know. I
10 mean, would you hire somebody without having a thorough
11 interview with them and understanding, you know, what
12 their operations are?

13 If I look down to the future and I say --
14 let's say there's multiple City contracts that come out,
15 or multiple Harris County contracts that come out, and
16 now all of them require a 10 to 15 percent minority
17 participation. The problem -- the disadvantage that
18 that puts me in is the efficiency of, now instead of
19 having one subcontractor, minority subcontractor, that
20 does this particular contract for the City, I have one
21 over here; I have one over here; I have one over here; I
22 have one over here.

23 The reason that is, is because these are
24 supposed to be small, disadvantaged businesses. So if I
25 have a contract on the north side of town, these con- --

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1 minority prime contractors?

2 A. Yes.

3 Q. And how is that -- how is that?

4 A. Well, you know, not knowing the subcontractor
5 -- the minority subcontractor. Not knowing, you know,
6 what they would price something at when we ask them to
7 do some work. We -- we have to take that into
8 consideration in our own pricing. So, yeah, I think
9 that puts us at a disadvantage, because all the -- most
10 of the bids we do are low contract bids.

11 So, I've won bids barely by \$500 a year,
12 and I've lost them, you know, by 10,000 a year. So --
13 so it does put us at a disadvantage, because they are
14 being assisted, okay, by the City. You know, they don't
15 have to go out and do all the legwork that's required.
16 They're not required to come to the pre-bid meetings.
17 They're not required to -- there's -- they don't have
18 very much responsibility, other than waiting for a prime
19 contractor to call them. I'd be going off a little
20 differently, but that's part of the problem.

21 Q. Well, you're talking right now about the
22 subcontractors --

23 A. Right.

24 Q. -- which don't have to come to the bid
25 meetings. Don't have to go out and find you; you have

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1 A. True.

2 Q. -- and another prime contracting landscaping
3 business; is that correct?

4 A. That's not what that says. I mean, it
5 basically says that it's my company. I have no idea
6 what other prime contractors do or perform. But it puts
7 us at a disadvantage, because there's no reason for us
8 to have to -- contractor, coming to an agreement with a
9 subcontractor, when we can do that work on our own. So
10 the disadvantage is that I have to give 10 percent to
11 another company, when my company is fully capable and
12 willing and able to do the work itself.

13 Q. So in your view, the disadvantage is not a
14 disadvantage compared to some other business. It's a
15 disadvantage compared to how much money you could have
16 made on the contract if you were doing it all yourself?

17 A. Fair enough.

18 Q. Okay.

19 A. Put that a different way. I'd like to
20 interject that, is that if --

21 Q. Let me ask the question so we have a clear
22 record.

23 A. Okay.

24 Q. Do you have something you would like to add to
25 your previous answer?

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1 that correct?

2 A. Yes.

3 Q. Okay. And you just told me you have no plans
4 of retiring. I assume you have no plans on turning the
5 business over to your son at any point; you intend to
6 continue to own it?

7 A. I mean, he'll take on more and more
8 responsibility, but not at this point --

9 Q. Okay.

10 A. -- not at this time.

11 Q. Okay. Okay. In the last two years, Landscape
12 has successfully bid on and been awarded government
13 contracts, including MBE participation goals, right?

14 A. Yes.

15 Q. And that includes more contracts -- it includes
16 the City of Houston contract, and it includes some of
17 the other contracts we talked about, like the Harris
18 County contracts?

19 A. Yes.

20 Q. Do you intend to continue to bid on those kinds
21 of contracts?

22 A. I have no choice in a lot -- in a lot of cases,
23 because it's not like business is falling off the trees.
24 So, you know, you have to make decisions. If you have
25 40 employees, 45 employees, and you see where, you know,

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1 you have to fill their schedules; sure I would,
2 begrudgingly.

3 Q. One moment. I'm just going over my notes.
4 Thank you, sir. I don't have any more questions for
5 you, unless your attorney asks some questions and I have
6 to follow up on. Mr. Sileo may have some questions.

7 MR. STEPHENS: I'll pass the witness then.

8 MS. WILCOX: Can we just clarify because
9 Midtown didn't notice a deposition. Is this gonna be in
10 his individual capacity, or what are we doing?

11 MR. SILEO: Well, the notice was for
12 Mr. Thompson individually and also in his corporate
13 capacity. And I'm a party of the case, so I get to
14 depose him in his individual and in his corporate
15 capacity as the notice stated.

16 MS. WILCOX: Right. I'm sure it's a
17 different party. I mean, I'll allow it. But -- so
18 you're planning to take his individual --

19 MR. SILEO: Yes.

20 MS. WILCOX: -- both individual and --
21 okay.

22 (Cross-talk.)

23 MR. SILEO: Yes. You ready, sir?

24 THE WITNESS: Sure.

25 THE REPORTER: Hold on. Time out.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LANDSCAPE CONSULTANTS OF)
TEXAS, INC., and)
METROPOLITAN LANDSCAPE)
MANAGEMENT, INC.,)
Plaintiffs,)
v.) Civil Action No 4:23-cv-03516
CITY OF HOUSTON, TEXAS,)
and MIDTOWN MANAGEMENT)
DISTRICT,)
Defendants.)

ORAL DEPOSITION OF GERALD THOMPSON

November 6, 2024

I, Dawn McAfee, Certified Shorthand Reporter
in and for the State of Texas, do hereby certify to the
following:

That the witness, GERALD THOMPSON, was duly
sworn by the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

I further certify that pursuant to FRCP Rule
30(e)(1) that the signature of the deponent:

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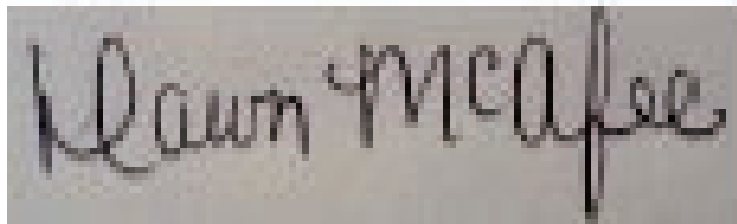
1 __X__ was requested by the deponent or a
2 party before the completion of the deposition and is to
3 be returned within 30 days from the date of receipt of
4 the Signature Page contains any changes and the reasons
5 therefor;

6 __ was not requested by the deponent or a
7 party before the completion of the deposition.

8 I further certify that I am neither counsel
9 for, related to, nor employed by any of the parties or
10 attorneys to the action in which this proceeding was
11 taken. Further, I am not a relative or employee of any
12 attorney of record in this cause, nor am I financially
13 or otherwise interested in the outcome of the action.

14 Subscribed and sworn to on this _____
15 day of _____, _____.
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A handwritten signature in black ink that reads "Dawn McAfee". The signature is written in a cursive style and is positioned above a horizontal line.

Dawn McAfee
Texas CSR No. 4578
Expiration Date: 09/30/25
U.S. Legal Support
16825 Northchase Drive
Houston, Texas 77060
Firm Registration No. 122